

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District OF PUERTO RICO
Name of Movant GABRIEL MORALES-MADERA	Prisoner No. 20820-069	Case No. CR-97-271
Place of Confinement Low Security Correctional Institution at Butner		

UNITED STATES OF AMERICA

V. **GABRIEL MORALES-MADERA**

(name under which convicted)

MOTION

- Name and location of court which entered the judgment of conviction under attack **United States District Court for the District of Puerto Rico (First Circuit)**
- Date of judgment of conviction **January 22, 2002**
- Length of sentence **Two Hundred & Fifty Months**
- Nature of offense involved (all counts) **Conspiracy to Possess With The Intent to Distribute and Distribute More than 5 Kilograms of Cocaine, 1 Kilograms of Heroin & Multi Kilograms of Marijuana. In violation of Title 21 U.S.C. §§846 & 841(a)(1).**

5. What was your plea? (Check one)

(a) Not guilty ☒

(b) Guilty

(c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☒

(b) Judge only

7. Did you testify at the trial?

Yes No ☒

8. Did you appeal from the judgment of conviction?

Yes No ☒

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SAN JUAN, P.R.

(a) Name of court First Circuit Court of Appeals Case No. 02-1220

(b) Result Affirmed

(c) Date of result November 20, 2003

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

- (4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

- (b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised _____

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective Assistance of Counsel for Failure to Ensure That
Petitioner Be Sentenced As The Result of A General Verdict Requiring Sentencing

Only To Marijuana.

Supporting FACTS (state *briefly* without citing cases or law): (See Memorandum of Law Attached)

B. Ground two: Ineffective Assistance of Counsel For Failure to Refute the Conviction
On The Ground That The Indictment Failed To State An Offense.

Supporting FACTS (state *briefly* without citing cases or law): (See Memorandum of Law Attached)

C. Ground three: Ineffective Assistance of Counsel For Failure to Refute All Out Of Court
Testimony & Statement(s) In Violation of the 6th Amendment and Crawford vs. U.S.

Supporting FACTS (state *briefly* without citing cases or law): (See Memorandum of Law Attached)

D. Ground four: Ineffective Assistance of Counsel For Failure to Refute The Court's Reliance Upon 150 Kilograms of Cocaine via Preponderance In Violation of Petitioner's 6th Amendment Right Infringing Upon Blakely v. Washington and United States v. Booker.
Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____
- _____
- _____
- _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes _____ No ☒ **X**

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Johnny Rivera Gonzalez, Esq. Attorney at Law
652 Avenida Munoz Rivera Suite 3125
San Juan, Puerto Rico 00918 4261

(b) At arraignment and plea Same as above.

(c) At trial Same as above.

(d) At sentencing Same as above.

(e) On appeal same as (15-a) of this motion(f) In any post-conviction proceeding n/a

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Gabriel Morales-Madera
Gabriel Morales-Madera

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

MARCH 28, 2005

Date

Gabriel Morales-Madera
Gabriel Morales-Madera

Signature of Movant